

ADVISORY OPINION 95-009

Any advisory opinion rendered by the Registry under subsections (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121.135(4).

May 7, 1995

Mr. W. Douglas Myers
Kentucky Academy of Trial Attorneys
4101 Danville Building
12700 Shelbyville Road
Louisville, Kentucky 40243-1537

Dear Mr. Myers:

This is in response to your April 6, 1995, letter in which you request an advisory opinion regarding a proposed expenditure by the Kentucky Attorney's Political Action Trust ("KAPA"), a registered political action or permanent committee of the Kentucky Academy of Trial Attorneys ("KATA"). You ask whether KAPA may expend \$25,000 toward assisting the Association of Trial Lawyer's of America ("ATLA") in opposing federal tort legislation which would preempt state law, if enacted. You further advise that ATLA will provide a receipt to KAPA for the services rendered on its behalf.

KRS 121.175(1), which was enacted during the 1993 special session of the General Assembly and became effective on July 15, 1994, provides that:

No candidate, committee, or contributing organization shall permit funds in a campaign account to be expended for any purpose other than for allowable campaign expenditures. "Allowable campaign expenditures" means expenditures including reimbursement for actual expenses, made directly and primarily in support of or opposition to a candidate, constitutional amendment, or public question which will appear on the ballot... (emphasis added).

A "committee" is defined by KRS 121.015(3) to include the following: a campaign committee, a political issues committee, a permanent committee, an executive committee of a political party, and an inaugural committee. "Campaign account" is not defined by statute; however, from its context in KRS 121.175, it does not appear to relate exclusively to a "campaign committee" insofar as a "contributing organization" is also included in the expenditure restriction.

KAPA is a registered permanent committee and its expenditures must comply with KRS 121.175 which requires that an "allowable campaign expenditure" be "directly and primarily in support of or opposition to a candidate, constitutional amendment, or public question which will appear on the ballot..." (Emphasis added).

Although the purpose for the expenditure would appear to further the goals of KATA as recited in its By-laws which includes "supporting the remedies of members of the general public who are injured or sustain damages," the purpose of the expenditure, assisting ATLA in opposing federal legislation, does not appear to be related to an issue which will appear on the ballot. Therefore, the proposed expenditure is not an "allowable campaign expenditure" as defined by KRS 121.175.

Federal Election Commission Advisory Opinion Number 1982-14

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April 9, 1982

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-14

Philip Van Dam

Michigan Republican State Committee

414 Townsend Street

P.O. Drawer 632

Midland, Michigan 48640

Dear Mr. Van Dam:

This responds to your letter of March 2, 1982, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the establishment of an account devoted to reapportionment-related activities in Michigan.

Your letter states that the Michigan Republican State Committee ("the Committee") has traditionally attempted to influence the decisions of the Michigan State Legislature as regards the Congressional reapportionment activities of the State Legislature. The Committee has generally engaged the services of computer programmers and computer time to gather demographic information regarding the state. This information is analyzed and computer programs developed. The computer programs have then been used to develop Congressional reapportionment plans and maps which are made available to the appropriate State Legislative committee or committees for the purpose of influencing legislative activity regarding the reapportionment process. You add that occasionally, the Committee has instituted legal challenges to Congressional reapportionment plans developed by the State legislature.

You note that this year, as a result of the recent decennial census, the State Legislature is again presently in the Congressional reapportionment process. Accordingly, the Committee finds itself involved in attempting to influence the State Legislature as regards legislative activity connected with the process. Such activity by the Committee brings with it attendant costs for computer services, population studies and evaluations, map drawing, plan presentation, and legal services. In light of the fact that the Committee does otherwise engage in the type of election influencing activity that is normally subject to the Act, you ask whether the Committee may establish a separate segregated account to receive and disburse funds for the purpose of influencing the Congressional reapportionment activities of the State Legislature.

Under the Act, the term "contribution" includes "any gift, subscription, loan, advance, or deposit of money, or anything of

value made by any person for the purpose of influencing any election to Federal office...." 2 U.S.C. SS 431(8). The influencing of Federal elections by persons and organizations is regulated by the Act and the Commission's regulations. The influencing of the reapportionment decisions of a state legislature, although a political process, is not considered election influencing activity subject to the requirements of the Act. Advisory Opinion 1981-35. Similarly, the Committee's financing of litigation which relates to reapportionment decisions made by the Michigan legislature would not be viewed as election influencing under the Act and Commission regulations. See Advisory Opinion 1981-35, and compare Advisory Opinion 1980-57, copies enclosed. Accordingly, based upon your representations that the Committee intends to use the funds accumulated in the separate account solely to finance reapportionment-related activity, the Commission concludes that receipts and disbursements from the reapportionment account would not constitute contributions or expenditures under the Act. This conclusion is conditioned on the Committee's not using any of the funds contained in the reapportionment account to finance any election advocacy, including the donation of services or computer data purchased with funds from the reapportionment account, to a candidate for Federal office or to a political committee. See 2 U.S.C. SS 431(4).

Based on the foregoing discussion and the Commission's conclusion that the funds received and disbursed from the reapportionment account are not contributions or expenditures (and thus not subject to the Act's disclosure requirements), it follows that such funds are not subject to the contribution limitations and prohibitions of the Act. Accordingly, the Commission concludes that nothing in the Act or Commission regulations would prohibit the receipt of corporate contributions to the reapportionment account. In this regard the Commission notes that 2 U.S.C. SS 441b prohibits corporations from making contributions or expenditures in connection with any election to any Federal office. The legislative history of that section of the Act indicates, however, that the broad prohibition against corporate involvement in the election process was not intended to cover lobbying activity.^{1/} See Advisory Opinion 1981-35, citing Advisory Opinion 1978-52. The Commission has previously recognized that the Congressional reapportionment process may be viewed as similar to, if not actual, lobbying of the state legislature. See Advisory Opinion 1981-35. Thus, the prohibitions of 2 U.S.C. SS 441b would not apply to corporations making donations to the Committee's reapportionment account. It should be noted however that none of the funds donated to the reapportionment account (including donations by corporations or any other prohibited source) may be transferred to a Committee account which is used in connection with a Federal election. See 11 CFR 113.4 for an analogous treatment of corporate contributions to office accounts of Federal officeholders. The Commission expresses no opinion regarding application of any State law to the issues described herein. This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in

your request. See 2 U.S.C. SS 437f.
1/117 Cong. Rec. 43380 (1971), (remarks of Rep. Hansen)